

HOUSE

STUDY

GROUP bill analysis

4//8/83

HB 1426

Green

SUBJECT: Lawyer-referral services

COMMITTEE: Judiciary: favorable, with amendment

VOTE: 6 ayes--Bush, Khoury, Armbrister, Cavazos, Toomey, Wilson
0 nays
3 absent--M. Garcia, Kemp, R. Martinez

WITNESSES: For--David G. Allums and Elwyn C. Lee, Houston Bar Association Lawyer Referral Service
Against--None

DIGEST: HB 1426 would set minimum standards for lawyer-referral services. Such a service would have to be operated, sponsored, or approved by a local bar association representative of the general bar in the area and not organized solely for referral services; be operated on a nonprofit basis; be designed to benefit the public, not to employ lawyers; be available to attorneys in every field of law and provide referral for every type of legal service; and require each participating attorney to maintain \$100,000 in professional liability-insurance coverage.

The referral service could charge a reasonable fee to participating attorneys to defray administrative expenses. The service could establish a maximum initial consultation fee of no more than \$20 to be charged by participating attorneys. For referral of specific types of cases, the service could set certain experience standards or require specialist certification.

Upon request of any interested person or group, the State Bar standing committee on professional ethics would render a binding opinion on whether a service was legal and proper and would review the reasonableness of any fees charged.

The committee amendment would permit suit to enjoin violation of the provisions of the bill.

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SUPPORTERS
SAY:

HB 1426 would protect consumers from subterfuge and fraud by preventing bogus "referral services" set up under an assumed name by a law firm to direct business to themselves. Such practices are already in violation of State Bar disciplinary rules but the existing enforcement procedures are often cumbersome. The bill would ensure that referral services would be responsibly operated as a public service, open to all attorneys for a minimal administrative fee, and sponsored by a local bar association on a nonprofit basis. Attorneys who participated in the referral service would have to maintain minimum standards of competency and malpractice-liability insurance before anyone would be referred to them, in order to protect consumers who use the service.

Persons who are new to a community or only occasionally need legal services are not likely to have a regular attorney. Referral services to match client problems with the best available attorney are a public service that should be encouraged but regulated to avoid potential problems. Referral services operating solely as a front to steer business to one firm are deceptive and authority should be granted to shut them down. Referral services should be open to all qualified attorneys who wish to participate, and HB 1426 so provides.

There might be some antitrust problems with a state-established minimum professional fee, but HB 1426 would only set a maximum fee for initial consultation when the potential client is referred to an attorney. Recent decisions by the U.S. Supreme Court imply that even price ceilings set by professional associations may be considered price-fixing, so it is necessary that they be set by state law. Obviously, restricting the amount of a fee charged for an initial consultation is a justifiable consumer-protection policy.

OPPONENTS
SAY:

HB 1426 would give the local legal establishment too much power over maverick attorneys and those just entering the profession. By allowing a referral service under the aegis of the local bar to set "experience standards" and require substantial liability insurance as a qualification, this bill invites the establishment of a closed mutual-aid network, freezing out unpopular or novice attorneys from client referrals. The bill would effectively prevent any competing referral services, since only the local bar could establish one.

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OPPONENTS
SAY:
(continued)

The U.S. Supreme Court has ruled that when professionals act together to set any minimum or maximum fee, that automatically constitutes illegal price-fixing. It is bad policy for the state to sanction price-fixing by the legal profession by trying to bring it under the antitrust exemptions for state regulation.

NOTES:

The companion to HB 1426, SB 1173, by Whitmire, is pending in the Senate Jurisprudence Committee.

The Code of Professional Responsibility governing the conduct of members of the State Bar of Texas provides, in Disciplinary Rule 2-103(E)(3), that a lawyer may cooperate with a lawyer-referral service operated, sponsored, or approved by a representative of the local bar association. For purposes of interpretation, Ethical Consideration 2-15 says that lawyers should support the principle of lawyer-referral systems and encourage plans that aid in selection of qualified counsel. Violations of disciplinary rules are considered by the State Bar's local grievance committee or its committee on professional ethics.

Local bar associations, unlike the State Bar of Texas, may not require all licensed attorneys to be members.

HB 1426 amends existing law by adding a new section. Under recent rulings by the Speaker, it might be subject to a point of order because its new language is not underlined.